

EXHIBIT "B"

JUSTIN CALL DEPOSITION JANUARY 20, 2017

JUSTIN CALL Volume 1
LORI WAKEFIELD vs VISALUS

January 20, 2017

1

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

LORI WAKEFIELD, on behalf of
themselves and a class of
others similarly situated,

Plaintiff,

No. 3:15-cv-01857-BR

V.

VISALUS, INC., a Nevada
Corporation,

Defendant.

ORAL DEPOSITION OF JUSTIN CALL

VOLUME 1

ANSWERS AND DEPOSITION OF JUSTIN CALL, produced as
a witness at the instance of the Plaintiff, taken in the
above-styled and -numbered cause on the 20th day of
January, 2017, A.D., beginning at 9:57 a.m., before
Brandy Cooper, a Certified Shorthand Reporter in and for
the State of Texas, in the offices of Esquire Deposition
Solutions, located at 1700 Pacific Avenue, Suite 1000,
Dallas, Texas, in accordance with the Federal Rules of
Civil Procedure and the agreement hereinafter set forth.

A P P E A R A N C E S

FOR THE PLAINTIFF:

STEWART R. POLLOCK
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FOR THE DEFENDANT:

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P R O C E E D I N G S

THE REPORTER: Are there any stipulations or agreements for the record before we begin?

MS. ANCHORS: No.

MR. POLLOCK: I don't think so.

THE REPORTER: Will counsel please state their names and whom they represent for the record.

MR. POLLOCK: Stewart Pollock on behalf of plaintiff.

MS. ANCHORS: Sarah Anchors on behalf of defendant.

JUSTIN CALL,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. POLLOCK:

Q. Good morning, sir.

A. Morning.

Q. Would you please state your full name for the record?

A. Justin Call.

Q. And have you ever been deposed before?

A. Yes.

Q. All right. When were you deposed, most recently?

A. I don't know the exact dates, but probably a

1 there was a lot -- I don't know how detailed you want me
2 to get, but that was the primary purpose.

3 Q. And that includes inbound and outbound?

4 A. At the time, we only had inbound.

5 Q. When was the -- is it called outreach support?
6 Is that the outbound call center?

7 A. That was a terminology that they kind of came
8 up with, yes.

9 Q. Okay. When was the outreach team created?

10 A. Best of my recollection, somewhere, I would
11 think, beginning of 2012. Somewhere in that range.

12 Q. And the outreach team was terminated in January
13 2016?

14 A. If that's the information you have, I don't
15 recall exactly.

16 Q. Okay. Was it --

17 A. I have no reason to dispute if you've got that
18 information. I don't recall exactly.

19 Q. Does that sound approximately right to you?

20 A. Yeah, it sounds -- yeah, it sounds right.

21 Q. Okay.

22 A. If I were to guess, I would have thought it was
23 before then, like the end of 2015.

24 Q. All right. So in 2011, I understand that you
25 oversaw the call center which was inbound only at that

1 Q. Okay. And that's a functionality within the
2 Avaya system, correct?

3 A. No. It's an addition.

4 Q. Okay. So when you say "dialer," what do you
5 mean by that?

6 A. It means instead of you having to push the
7 buttons yourself, it can dial it for you.

8 Q. Okay. And when did Visalus begin to use POM?

9 A. Boy, it took forever to get going. I think it
10 was probably -- I just don't really -- it was probably
11 '14, I would think, maybe '13. It took -- I'm thinking
12 it took -- might have been beginning of '14 by the time
13 it actually got going. But I honestly don't recall it
14 if the -- yeah.

15 Q. Okay. What was the purpose of using POM?

16 A. So you didn't have to dial the phone manually.

17 Q. Okay. Do you know when Visalus stopped using
18 POM?

19 A. Just probably around the coincide of the time
20 we stopped doing outreach.

21 Q. Okay.

22 A. So somewhere end of whatever we decided -- end
23 of '15. We may have even stopped using that beforehand.

24 Q. Okay. What sort of campaigns did Visalus use
25 POM for?

1 Q. You're probably not one of their top accounts
2 at this point?

3 A. Good conclusion. That's for sure. At the time
4 when we got it, we had 3 or 400.

5 Q. 3 or 400 what?

6 A. Call center agents.

7 (Exhibit No. 7 was marked.)

8 Q. (BY MR. POLLOCK) This document is labeled
9 Exhibit 7. Again, this is a list of file names. Are
10 you familiar with any of these file names?

11 A. I mean, just in a general sense, I know what
12 CSV files are, but I'm not familiar with any of the
13 specific files. I mean, I know what DNC generally
14 stands for -- unsubscribes, I can draw conclusion based
15 on logic and experience.

16 Q. Okay. What are your conclusions based on logic
17 experience and working at Visalus?

18 A. Unsubscribes are people that probably
19 unsubscribe to something, and DNC would be somebody that
20 does not want to be called.

21 Q. Okay. You weren't involved in the process of
22 collecting or aggregating information about
23 unsubscribed --

24 A. No.

25 Q. -- accounts? And that would be something that

1 Visalus would compile from its own records, rather than
2 going around and asking each individual promoter, right?

3 A. I mean, we have an opt in and a consent form
4 for them when they join Visalus so we can contact them.
5 And then we had a -- when we had a dialer that we were
6 calling them, we had the opportunity for them to opt out
7 of being called by the dialer -- or you know, by the
8 outbound team.

9 Q. Okay. And that would have been communicated
10 directly from a customer to Visalus rather than Visalus
11 needing to obtain that information from each promoter;
12 does that make sense?

13 A. Well, I mean, I think you're asking the same
14 thing. I mean, so if a -- if the end consumer, whether
15 customer or promoter, says don't call me anymore, then
16 we would -- we would capture that -- indicate that.

17 Q. Okay. That would all be one, sort of, common
18 file or database that Visalus would maintain?

19 MS. ANCHORS: Objection, foundation.

20 A. I don't know. I know from -- on a -- as I
21 already mentioned, there's -- on the dialer, there's a
22 database that shows people on the dialer that have said
23 they do not want to be called again.

24 Q. (BY MR. POLLOCK) Okay.

25 A. And then that was on the dialer. Doesn't mean,

1 company one just, you know, announces that it came out
2 three weeks ago or so.

3 Q. Okay. I think we talked a little bit about
4 consent records earlier. Do you recall that?

5 A. Consent records?

6 Q. Let's just circle back. So when promoters sign
7 up to be promoters, they fill out a form, right, and
8 that can either be a physical form or an online form; is
9 that correct?

10 A. Correct. I mean, that's -- yeah.

11 Q. And then the information from that includes, at
12 least in the online portal, then there's a tab that says
13 communication preference, right?

14 A. Correct.

15 Q. And that information then is for each
16 individual there, their communication preference --

17 A. Yes.

18 Q. -- is stored in a database maintained by
19 Visalus, correct?

20 A. Yes.

21 Q. So you could look at one of Visalus' databases
22 to figure out any specific individual's communication
23 preference, right?

24 A. Correct.

25 MR. POLLOCK: Okay. I have no further

SCOTT GIDLEY DEPOSITION DECEMBER 12, 2016

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

LORI WAKEFIELD, on behalf of
themselves and a class of
others similarly situated,

Plaintiff,

-v-

No. 3:15-cv-01857-BR

VISALUS, INC., a Nevada
Corporation,

Defendant.

_____ /

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The deposition of SCOTT A. GIDLEY,
Taken at 623 West Huron Street,
Ann Arbor, Michigan,
Commencing at 10:10 a.m.,
Monday, December 12, 2016,
Before Cheryl McDowell, CSR-2662, RPR.

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1 **APPEARANCES :**

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8 Appearing on behalf of the Plaintiff.

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17 Appearing on behalf of the Defendant.

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1 Ann Arbor, Michigan

2 Monday, December 12, 2016

3 About 10:10 a.m.

4 (Laun Exhibits Nos. 2, 3, and 4 previously
5 marked and attached.)

6 SCOTT A. GIDLEY,

7 having first been duly sworn, was examined and testified
8 on his oath as follows:

9 **EXAMINATION BY MR. POLLOCK:**

10 **Q. Good morning, sir. I introduced myself off the**
11 **record. My name is Stewart Pollock, and I represent**
12 **the plaintiff in this case.**

13 **Could you please state your full name for**
14 **the record?**

15 A. Scott, S-C-O-T-T, Alan, A-L-A-N, Gidley, G as in
16 George, I-D as in David, L-E-Y.

17 **Q. All right. Have you ever had your deposition taken**
18 **before?**

19 A. I have been deposed, yes.

20 **Q. How many times have you been deposed?**

21 A. Once.

22 **Q. In what case were you deposed?**

23 **MS. ANCHORS:** You can answer the question.

24 **THE WITNESS:** Okay. It was Connelly versus
25 ViSalus.

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1 agents because of my knowledge of the company. I
2 would generally advise them as to how to handle
3 incoming calls specific. At that time if they were
4 having a problem with a phone call and were unsure of
5 how to proceed, I would advise them the best course of
6 action.

7 **Q. So were you working in or closely with the call center**
8 **from August 2011 until approximately August 2012?**

9 A. I was in the call center and technically I still am.
10 I do work in the Michigan office.

11 **Q. Okay. You say technically you still are.**

12 **Is there a sense in which you're not still**
13 **in the call center?**

14 A. I don't answer incoming phone calls any longer.

15 **Q. You seem happy about that.**

16 A. Someone needs to enforce the rules.

17 **Q. And that's your job?**

18 A. That is my job.

19 **Q. In the call center, you've mentioned incoming calls.**

20 **Does the call center place outgoing calls?**

21 A. Not any longer.

22 **Q. When did that change?**

23 A. January of 2016 we dissolved our outbound team.

24 **Q. Why was the outbound team dissolved in January 2016?**

25 **MS. ANCHORS:** Objection, foundation.

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1 BY MR. POLLOCK:

2 Q. You can answer.

3 MS. ANCHORS: You can answer to the extent
4 that you know.

5 THE WITNESS: The company downsized.

6 BY MR. POLLOCK:

7 Q. So that's more of an effect of dissolving the outbound
8 call center.

9 Do you know why the company downsized to
10 get rid of those call center employees?

11 MS. ANCHORS: Objection, foundation.

12 THE WITNESS: That's not in effect.

13 BY MR. POLLOCK:

14 Q. Okay. Do you know why the -- why ViSalus dissolved
15 the outbound call center and laid off or downsized
16 those employees?

17 A. It wasn't those employees specifically.

18 Q. What do you mean by that?

19 A. The company downsized and released, terminated
20 employees in multiple departments.

21 Q. Okay. And they terminated the entirety of the
22 outbound call center department, right?

23 MS. ANCHORS: Objection, form.

24 THE WITNESS: The last vestiges I'll say.
25 The company had gone through many downsizing

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1 situations.

2 **BY MR. POLLOCK:**

3 **Q. All right. Were any other departments terminated in**
4 **January 2016?**

5 **MS. ANCHORS:** Objection, foundation.

6 **THE WITNESS:** Our social media department.
7 Multiple departments were affected.

8 **BY MR. POLLOCK:**

9 **Q. Who made the decision to dissolve the outbound call**
10 **center in January 2016?**

11 A. I don't know that answer. I can guess.

12 **MS. ANCHORS:** Please don't guess.

13 And I'm going to ask you to limit your
14 questions to what's in the 30(b)(6) topics. We're
15 getting pretty far out of range of those.

16 **BY MR. POLLOCK:**

17 **Q. What's the highest level of education you've received?**

18 A. I have a Bachelor's degree in biology.

19 **Q. Where did you get your Bachelor's?**

20 A. Illinois Wesleyan University.

21 **Q. When did you get your Bachelor's?**

22 A. 1991.

23 **Q. Do you have any additional professional licenses or**
24 **certificates?**

25 A. No.

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1 Q. Only some agents had access to it?

2 A. Yes.

3 Q. And just so the record is clear, when I say POM, I'm
4 referring to Progressive Outreach Manager?

5 A. Yes.

6 Q. That's P-O-M?

7 A. Yes.

8 Q. You said that around October or December 2014
9 approximately, ViSalus started using POM to place
10 calls and report numbers, and you just described for
11 me the reporting side of that.

12 How was POM used to place calls?

13 A. It has a database of phone numbers to be dialed. So
14 depending on the actual campaign, those numbers would
15 have been imported.

16 Q. So the database of phone numbers, that's something
17 that an agent would upload?

18 A. Yes.

19 Q. So an agent --

20 A. Depending on the campaign.

21 Q. Yeah. Generally talking about, say, a winback
22 campaign, they might get -- they would get a list of
23 phone numbers uploaded into POM to be dialed?

24 A. Correct.

25 Q. Okay. And then between October or December 2014 and

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1 **January 2016, were there any changes to how ViSalus**
2 **conducted winback campaigns?**

3 A. Yes.

4 **Q. Okay. What was the next change?**

5 A. We stopped using the Progressive Outreach Manager at
6 the beginning of October in 2015.

7 **Q. Why was that?**

8 **MS. ANCHORS:** You can answer to the extent
9 that you know and it doesn't involve any
10 attorney-client privilege information.

11 **THE WITNESS:** We received a lawsuit
12 notification.

13 **BY MR. POLLOCK:**

14 **Q. And in response to that lawsuit, ViSalus stopped using**
15 **POM in October 2015?**

16 **MS. ANCHORS:** You can answer to the extent
17 you know and it doesn't involve any attorney-client
18 privilege information.

19 **THE WITNESS:** As far as I know.

20 **MR. POLLOCK:** All right. I think now would
21 be a good time to take a lunch break.

22 **MS. ANCHORS:** I think so, too.

23 (Off the record at 1:34 p.m.)

24 (Back on the record at 1:55 p.m.)

25 **MR. POLLOCK:** Back on the record.

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1 some sort of check that was done on them.

2 **THE WITNESS:** Paragraph twelve doesn't --
3 on Exhibit 6 doesn't indicate anything regarding cell
4 phones. It says phone, check phone numbers, slash,
5 emails for DNC.

6 **MS. ANCHORS:** Right, right. I understand
7 that.

8 I was asking in terms of when that sort
9 of check was done, was there -- as I understand
10 Mr. Pollock's question is was there a check similar to
11 that that was also done in terms of whether or not it
12 was a cell phone number.

13 **THE WITNESS:** And if it's not in Exhibit 6,
14 then the answer would be no.

15 But in terms of clarification of this
16 matter, there's no way for the company to know whether
17 a phone number that has been provided to us by a
18 customer or a promoter upon enrollment is a cell phone
19 number or a landline or a business number.

20 And if that is the situation, these are our
21 customers, and we can contact them. So there is no
22 reason to check as to whether a number being provided
23 is a cell phone number.

24 **BY MR. POLLOCK:**

25 **Q. That's because you believe that your customers have**

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1 **all consented to be called, is that right?**

2 A. I don't believe it. They have. They're our
3 customers.

4 **Q. Okay. But being a customer of ViSalus, that's how you**
5 **confirm that you have consent to place the calls?**

6 **MS. ANCHORS:** Objection, form.

7 **MR. POLLOCK:** Sure.

8 **BY MR. POLLOCK:**

9 **Q. How do you obtain consent prior to placing calls to**
10 **customers?**

11 **MS. ANCHORS:** Objection, form.

12 **THE WITNESS:** In their Vi-Net on their
13 customer account, there is a communications tab where
14 they choose the method of contact from us. Upon
15 enrollment they have to agree to terms and conditions
16 before the order is actually placed. This is for both
17 customers and promoters.

18 And a part of those terms and conditions is
19 consent to be contacted. In order for them to revoke
20 consent, they need to tell us.

21 **BY MR. POLLOCK:**

22 **Q. How do they need to tell you?**

23 A. To contact us and say they don't want to be called
24 which is why number twelve of Exhibit 6 is referring
25 to an internal Do Not Call List.

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1 **process?**

2 A. Nothing replaced it. We stopped uploading these
3 documents into or at least applications into the
4 documents because they had sensitive information.

5 **Q. Okay. So what was the sign-up process in 2012 after**
6 **that change?**

7 A. Well, they could still fill out a Promoter Application
8 or enroll online. It's just that if they filled out a
9 Promoter Application, we wouldn't upload it to the
10 documents.

11 **Q. Okay. So regardless of the time period of the**
12 **information contained in this form, the substance of**
13 **it would have been uploaded to Exigo, is that right?**

14 A. Yes.

15 **Q. In the right-hand column it says: Communication**
16 **preferences, home phone number, mobile phone number,**
17 **and then mobile phone provider required for ViSalus**
18 **mobile updates, parens, SMS, closed parens.**

19 **Is that what you meant earlier when you**
20 **said that promoters have to give consent to ViSalus**
21 **before ViSalus contacts them?**

22 A. Yes. This is essentially asking for their preferred
23 method of contact, again, because we do send
24 communications. If an order declines, we'll send that
25 via email or without making a phone call.

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1 We have news and updates. It says check
2 one where they can get emails or phone calls about or
3 text messages about anything exciting that we want to
4 let them know about.

5 **Q. Okay. Other than this box on the Promoter**
6 **Application, is there any other record that would**
7 **reflect ViSalus obtaining consent from customers to**
8 **receive communications via telephone?**

9 **A. They can --**

10 **MS. ANCHORS:** You can answer.

11 **THE WITNESS:** They can manage their
12 communication preferences through their Vi-Net
13 account.

14 **BY MR. POLLOCK:**

15 **Q. Would that include essentially the same form that's**
16 **shown here?**

17 **A. Essentially.**

18 **Q. Which is really just a blank for somebody to fill in**
19 **their phone number, right?**

20 **MS. ANCHORS:** Objection, form.

21 **MR. POLLOCK:** Okay. That's fine.

22 **BY MR. POLLOCK:**

23 **Q. In terms of where these records are maintained of the**
24 **Promoter Applications, those are maintained in Exigo,**
25 **right?**

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1 **MS. ANCHORS:** I'm going to object to the
2 extent that that calls for a legal conclusion since
3 he's not an attorney.

4 **BY MR. POLLOCK:**

5 **Q.** All right. How did you obtain and verify prior
6 express consent prior to placing telephone calls?

7 **MS. ANCHORS:** And I'm going to object to
8 the extent that it says verify. Object that it's an
9 unclear term in terms of what you mean, verify.

10 **BY MR. POLLOCK:**

11 **Q.** Okay. Do you know what verify means?

12 **A.** I do.

13 **Q.** What does it mean to you?

14 **A.** If somebody wants to verify my zip code before I make
15 my car payment, then by typing in my zip code, then
16 I'm verifying it.

17 **Q.** It's kind of like a double-check to make sure that
18 it's right.

19 **Is that basically your understanding of**
20 **verification?**

21 **A.** If you say so.

22 **Q.** I'm just describing what you've or I'm trying to
23 reiterate what you've described for me.

24 **A.** You know, if you verify, I mean, yeah, I guess.

25 **Q.** Okay. So if I asked the process and methodology

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1 **ViSalus used to obtain and verify prior express**
2 **consent prior to placing telephone calls, would you**
3 **understand what that -- what I'm asking about?**

4 **MS. ANCHORS:** I'm still going to object to
5 form, again, because of the use of verify.

6 **MR. POLLOCK:** You can have a running
7 objection on verify.

8 **MS. ANCHORS:** And verified, it's a compound
9 question.

10 **THE WITNESS:** Okay. If someone provides
11 their phone number as their method of contact and
12 communication, they are essentially consenting to
13 receive phone calls.

14 Should they choose not to receive phone
15 calls, then we provided them with their Vi-Net account
16 where they can go in and remove their phone number or
17 should they choose on the communications tab to
18 withdraw consent.

19 **BY MR. POLLOCK:**

20 **Q. Okay. So the process then consent is obtained is by**
21 **customers putting their phone number down on the**
22 **Promoter Application form, is that right, whether it's**
23 **online or a physical form?**

24 **A. Well, customers don't complete Promoter Applications.**

25 **Q. All right. The process by which ViSalus obtains**

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1 **consent from promoters to contact them by telephone is**
2 **through promoters submitting Promoter Applications,**
3 **whether in print or online?**

4 A. Correct.

5 **Q. And that's the sole manner in which consent is**
6 **obtained?**

7 A. Do you have another method?

8 **Q. Will you just answer my question?**

9 A. It seems pretty straightforward that, you know, we
10 have an online application, we have a written
11 application and an online application, and if you
12 complete one or the other, you're consenting to be
13 contacted, and there is no other method for a promoter
14 to or for a person to become a promoter.

15 So between the two of them, then, yes, they
16 are consenting.

17 **Q. How about for customers, how does ViSalus obtain**
18 **customer consent?**

19 A. Customers have Customer Applications, and they still
20 have a similar enrollment process online.

21 **Q. The form being similar?**

22 A. Similar. The product offering is different.
23 Obviously they wouldn't have the Promoter Kits up at
24 the top.

25 **Q. The information that the customer submits would be the**

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1 **same?**

2 A. Essentially. Well, we don't require their Social
3 Security number.

4 **Q. As it relates to providing a telephone number, the**
5 **language would be the same?**

6 A. Essentially, yes.

7 **Q. And then your understanding is that that consent**
8 **remains valid until it is expressly revoked by**
9 **somebody changing it on Vi-Net, is that right?**

10 **MS. ANCHORS:** Objection, form.

11 **THE WITNESS:** That's not the only way, no.
12 You can, you can revoke consent by expressing that
13 verbally to an agent. You can revoke consent through
14 an email. You can -- so there are other ways to
15 revoke consent.

16 **BY MR. POLLOCK:**

17 **Q. Okay. So you can -- let's list them out. You can**
18 **revoke consent by changing your preferences on Vi-Net,**
19 **right? That's one?**

20 A. Yes.

21 **Q. And you can also revoke consent by sending an email to**
22 **ViSalus saying you no longer want to receive phone**
23 **calls, right?**

24 A. Yes.

25 **Q. You could communicate that over the telephone to**

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1 **ViSalus?**

2 A. Yes.

3 **Q. Is there anything else?**

4 A. If you're rather vindictive, you could always change
5 your phone number.

6 **Q. What if you added your number --**

7 A. In Vi-Net you can, like, we have people who change
8 their email addresses to something that they think is
9 going to be insulting to us should we ever run across
10 it.

11 **Q. All right.**

12 A. But they have the opportunity. They have the option
13 to be able to choose whether or not they want to be
14 contacted, how they can be contacted, and then they
15 can update their own information in their own promoter
16 accounts or customer accounts.

17 **Q. If somebody added their phone number to the National**
18 **Do Not Call Registry, would that constitute a**
19 **revocation of consent?**

20 A. Not necessarily.

21 **MS. ANCHORS:** Objection, form or foundation
22 rather to the extent that you're not answering what is
23 a legal conclusion.

24 **BY MR. POLLOCK:**

25 **Q. What was your answer?**